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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1848 OF 2019

Mr. Puneet Singh Kohli

.. Petitioner

Versus

Punjab and Sind Bank & Ors.

.. Respondents

Mr. Amit Sale a/w Adv. Goyal, Mr. Manindra Pandey a/w Ms. Aayushi Chauhan i/by Mr. T. Shendge for petitioner.
Mr. Sujeet G. Kurup for respondent nos.1 to 6.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 7, 2023

P.C.:

- 1.** During the pendency of the writ petition, the original petitioner (Jaspal Singh Kohli) died and the petition is now prosecuted by his son (Puneet Singh Kohli).
- 2.** Mr. Jaspal was dismissed from service. The petitioner seeks salary of Mr. Jaspal during the period of suspension, encashment of earned leave, pension, gratuity and provident fund.
- 3.** The learned counsel for the petitioner submits that Mr. Jaspal would be entitled for the encashment of earned leave of 240 days. The same is not paid to him. Mr. Jaspal had rendered continuous service of 24 years and as such is entitled for the gratuity amount and also the amount of the provident fund. The learned counsel submits that during the period of suspension, Mr. Jaspal had not been paid the salary. Mr. Jaspal was entitled for the same.
- 4.** The learned counsel for the respondent submits that Mr. Jaspal was dismissed from service. The order of dismissal of Mr.

Jaspal from service had become final. According to the learned counsel, a complaint filed by Mr. Jaspal was dismissed by the Maharashtra State Consumer Commission. It is further submitted that Mr. Jaspal was suspended as serious irregularities were found. The FIR was filed against Mr. Jaspal on 5th January, 1993. The suspension was revoked on 23rd July, 1996. The departmental enquiry was kept in abeyance. The disciplinary proceedings were started against Mr. Jaspal for unauthorized absence and charge-sheet was issued to him on 26th July, 1997. After enquiry, Mr. Jaspal was dismissed from service on 25th January, 1999. Mr. Jaspal was paid the terminal dues of Rs.1,58,170/- by the respondent/Bank. Out of the said terminal dues, an amount of Rs.49,269/- was adjusted against the liabilities outstanding against Mr. Jaspal. The Bank has its own provident fund and contributions are made to it. Mr. Jaspal's claim for gratuity is not tenable as he had not rendered continuous service of 24 years.

5. The learned counsel for the petitioner submits that Mr. Jaspal was also entitled for the TA and DA for attending the Court proceedings. Mr. Jaspal was exonerated and as such was entitled for the TA and DA as per the service conditions.

6. We have considered the submissions.

7. Mr. Jaspal was dismissed from service. As he was dismissed from service, he was not entitled for pension. So also, he would not be entitled for encashment of earned leave. The rules give details of the leave the employee is entitled to. However, according to the provisions referred to suggest that upon dismissal from service, the employee cannot claim encashment of earned leave.

8. As far as salary during the suspension period is concerned, Mr. Jaspal would not be entitled for the salary. The suspension period upon dismissal is not treated as a service period. Mr. Jaspal certainly would be entitled for subsistence allowance. According to the Bank, same has been paid to Mr. Jaspal. The reliance placed by

the learned counsel for the petitioner on Regulation 15 of the Punjab & Sind Bank Officer Employees' (Discipline & Appeal) Regulations, 1981 may not be of any avail. Under the Regulation 15(3)(b) it is clarified that in case falling under sub-regulation (2) the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose. Mr. Jaspal's case falls under sub-regulation (2) of Regulation 15 as Mr. Jaspal was dismissed from service, no specific reasons are recorded. As such, the period of absence from duty shall not be treated as period spent on duty. The period of suspension also cannot be treated as duty period. As such Mr. Jaspal would not be entitled for salary for the said period.

9. Mr. Jaspal certainly was entitled for the gratuity as the dismissal is not on the ground of any offence involving moral turpitude nor any loss is caused to the Bank. There appears to be dispute with regard to the number of years' service put in by Mr. Jaspal. In that view of the matter, it would be appropriate for the petitioner to approach the authority claiming payment of gratuity and the petitioner is at liberty to file such proceeding before the competent authority. So also, the petitioner may move the provident fund authority for the claim of provident fund. We do not have any details about the same.

10. As far as the TA and DA for attending the Court cases is concerned, the same is payable upon exoneration of Mr. Jaspal and on the petitioner producing certificate of the Court that Mr. Jaspal had attended the Court cases. We do not find such certificate placed on record about the number of days Mr. Jaspal had attended the court cases. In light of that, same cannot be granted. The petitioner may take such other proceeding as may be permissible under law.

11. As far as gratuity and provident fund are concerned, the petitioner is at liberty to approach the competent authority under the respective Acts. As far as the TA and DA is concerned, if the petitioner produces the proof that Mr. Jaspal had attended the Court cases, the petitioner may approach the respondent/Bank. The respondent/Bank may consider the same on its own merits. All contentions are kept open.

12. With the aforesaid observations, the writ petition stands disposed of. No costs.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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